

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR KITSAP COUNTY

CITY OF BREMERTON, a Washington
municipal corporation,

Plaintiff,

vs.

NATACHA SESKO,

Defendant.

Case No.: 07-2-01698-0

PLAINTIFF'S SECOND MOTION
TO CONTINUE TRIAL DATE AND
AMEND ORDER SETTING TRIAL
DATE AND CIVIL CASE EVENT
SCHEDULE

I. RELIEF REQUESTED

Plaintiff City of Bremerton requests that this Court enter an order continuing the trial date in this matter and amending the Order Setting Trial Date and Civil Case Event Schedule to continue the deadline for all case events pursuant to KCLCR 40(b)(6)(A)(vi).

II. STATEMENT OF FACTS

In July 2007 Plaintiff City of Bremerton ("the City") filed this nuisance action against defendant Natacha Sesko related to her property situated in Bremerton, Washington. The City alleges that the property is being used as an illegal junkyard and in violation of City Codes and previous orders issued in Kitsap County Superior Court Cause

1 No. 97-2-01748-5 ("*Sesko I*"). This case was originally set for trial on February 9, 2009.
2 On August 15, 2008, the City moved, without opposition, for a continuance of the trial
3 because the parties had been concentrating on appeals related to *Sesko I* and had been
4 unable to schedule an inspection of the property at issue due to conflicts in the schedules
5 of the parties and their lawyers. *See* Plaintiff's Motion to Continue Trial Date and Amend
6 Order Setting Trial Date and Civil Case Event Schedule. The Court granted the motion
7 and set the trial for October 26, 2009 and the discovery cutoff for June 29, 2009.
8

9 On February 19, 2009, the City inspected the property at issue. Declaration of
10 Mark E. Koontz in Support of Plaintiff's Second Motion to Continue Trial Date and
11 Amend Order Setting Trial Date and Civil Case Event Schedule. On April 10, 2009, the
12 City noted defendant's deposition for April 21, 2009. *Id.* Ms. Sesko's lawyer, Alan
13 Middleton, requested a continuance due to a scheduling conflict, and the City granted a
14 continuance. *Id.* The parties agreed to continue the deposition to May 15, 2009. *Id.*
15

16 On May 7, 2009, Mr. Middleton emailed the City's lawyer, Mark Koontz, stating
17 that defendant would be represented by Charmaine Clark. *Id.*, Exhibit A. On May 8, 2009,
18 Mr. Koontz telephoned Ms. Clark to discuss the upcoming deposition and other issues
19 related to the case; the call was unanswered, so Mr. Koontz left Ms. Clark a voice mail
20 message identifying himself and whom he represents and requesting a return call. *Id.* Ms.
21 Clark did not return Mr. Koontz's call, but she emailed Mr. Koontz on May 13, 2009
22 requesting a continuance of the deposition; she did not attach a notice of withdrawal and
23 substitution. *Id.*, Exhibit B. Mr. Koontz immediately emailed Ms. Clark granting a
24 continuance to the deposition and providing future available dates for her deposition. *Id.*,
25 Exhibit B. Mr. Koontz also informed Ms. Clark that the discovery cutoff is set for June
26

1 29, 2009 and the trial date is October 26, 2009, and Mr. Koontz requested that Ms. Clark
2 enter into a stipulation and order to continue these dates under the circumstances. *Id.*,
3 Exhibit B. Mr. Koontz did not receive any response from his email. *Id.*

4 On May 19, 2009, since Mr. Koontz had not received any further correspondence
5 from Ms. Clark and since the City had not been served a notice of withdrawal and
6 substitution, Mr. Koontz again called Ms. Clark and left a voice mail message for her
7 requesting a return call. *Id.* To date, Ms. Clark has not returned his call. *Id.*

9 On May 21, 2009 Mr. Koontz emailed Mr. Middleton, copying Ms. Clark, asking
10 when Mr. Koontz should expect to receive the withdrawal and substitution. *Id.*, Exhibit C.
11 On May 21, 2009 Mr. Middleton emailed Mr. Koontz that he had signed a withdrawal and
12 substitution and gave them to Ms. Clark "at least two, probably three weeks ago." *Id.*,
13 Exhibit C. In the email, Mr. Middleton copied Ms. Clark and requested the status of the
14 pleading. *Id.* To date, the City has not received a notice of withdrawal and substitution. *Id.*
15 Also to date, the City has not received any indication from defendant's purported new
16 attorney whether she would agree to a continuance of the trial date and discovery cutoff
17 date. *Id.*

19 Under the current circumstances, Mr. Koontz does not believe that discovery can
20 be completed by June 29, 2009 or that the City will be prepared for trial by October 26,
21 2009. *Id.* Mr. Koontz believes that if the Court continues the trial date to March 15, 2010,
22 or any date thereafter, and continues the other case events to comply with local rules, the
23 City would be able to complete discovery cutoff prior to the new discovery cutoff date
24 and properly prepare for trial. *Id.* The City is serving both Mr. Middleton and Ms. Clark
25 with this motion.
26

1 **III. STATEMENT OF ISSUES**

2 Whether the Court should grant the City's motion to continue the trial date and the
3 deadlines for other case events when there is good cause for doing so, specifically, that it
4 is unclear who, if anyone, is representing defendant, that the parties likely will not be able
5 to complete discovery prior to the discovery cutoff and that the parties likely will not be
6 prepared for trial on the current trial date.
7

8 **IV. EVIDENCE RELIED UPON**

9 A. The Pleadings filed herein;

10 B. Declaration of Mark E. Koontz, with Exhibits:

- 11 1. Email from Alan Middleton to Mark Koontz dated May 7, 2009 (Exhibit
12 A);
13 2. Email from Charmaine Clark to Mark Koontz and response from Mark
14 Koontz to Charmaine Clark dated May 13, 2009 (Exhibit B);
15 3. Email from Mark Koontz to Alan Middleton and response from Alan
16 Middleton to Mark Koontz dated May 21, 2009 (Exhibit C).
17

18 **V. AUTHORITY**

19 KCLCR 40(b)(6)(A)(iv) authorizes this Court to amend any date set out in the
20 Order Setting Trial Date and Civil Case Event Schedule upon a showing of good cause by
21 any party:

22 Upon motion of any party or the court, and upon good cause shown, the
23 preassigned judge may modify any date in the original Order Setting Trial
24 Date and Civil Case Event Schedule.

25 KCLCR 40(b)(6)(A)(iv).
26

1 In our case, as set out in the Declaration of Mark E. Koontz in Support of
2 Plaintiff's Second Motion to Continue Trial Date and Amend Order Setting Trial Date and
3 Civil Case Event Schedule, the City has shown good cause for a continuance of the trial
4 date and the other case events.

5
6 **VI. CONCLUSION**

7 There is good cause for continuing the trial date and other case events in the Order
8 Setting Trial Date and Civil Case Event Schedule. Therefore, this Court should grant the
9 City's motion and continue the trial date to a date convenient for the Court on or after
10 March 15, 2010.

11 DATED this 27th day of May, 2009.

12 ROGER A. LUBOVICH
13 Bremerton City Attorney

14 By: 
15 Mark E. Koontz, WSBA #26212
16 Attorney for Plaintiff
17
18
19
20
21
22
23
24
25
26